

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL FIRE	:	CIVIL ACTION
INSURANCE COMPANY	:	
	:	
v.	:	
	:	No. 06-648
WALTER SAJKOWICZ and	:	
CURT D. KRESSLEY	:	

ORDER-MEMORANDUM

AND NOW, this 22nd day of June, 2006, “Plaintiff Nationwide Mutual Fire Insurance Company’s Motion for Default Judgment or in the Alternative for Summary Judgment” - which defendants did not contest - is granted. Fed. R. Civ. P. 55(b)(2).¹

¹ Rule 55(b)(2) permits entry of a default in cases in which the opposing party has failed to plead or appear, and the claim is for other than an award of a sum certain. Fed. R. Civ. P. 55(b). The docket in this action reflects that on March 8, 2006, defendants were each served by personal service. Docket entries 2 and 3. Defendants did not plead or appear, and on April 28, 2006, plaintiff’s requests for default were entered against them. Docket entries 4 and 5. On June 8, 2006, plaintiff filed this motion for default judgment, to which defendants have not responded.

This action requests a declaration that plaintiff does not owe a duty to defend or indemnify its insured, defendant Walter Sajkowicz, in a personal injury suit commenced against him by defendant Curt D. Kressley, currently pending in the Court of Common Pleas of Lehigh County. Complaint, ¶¶ 21, 22. In the state court action, plaintiff’s insured is alleged to have injured the underlying plaintiff during an assault and battery. *Id.*, ¶¶ 11, 12. The policy issued by plaintiff excludes coverage for, inter alia, “bodily injury” that results from “an act intending to cause harm done by or at the direction of any insured.” *Id.*, ¶ 17, quoting Elite II homeowners policy no. 58 37 HO 178278, issued to Frances A. Ritz and Walter J. Sajkowicz, Amendatory Endorsement, at 4 (attached as Exhibit “B” to complaint).

(continued)

Judgment is entered in favor of plaintiff and against defendants as follows: Plaintiff does not owe a duty to defend or indemnify defendant Walter Sajkowicz in the lawsuit commenced by Curt D. Kressley and currently pending in the Court of Common Pleas of Lehigh County, Pennsylvania (No. 2005-C-1669, C.P. Lehigh County).

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.

Here, based on the pleadings and attachments, and on the docket, plaintiff is entitled to the requested relief.